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REMINISCENCES OF THE BAR*

BY

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The leading firms of attorneys in those days were the European firms. There was the firm of Government Solicitors then represented by Barclay and Morgan, of whom Mr. Barclay was to be rarely seen in Court. He was always attending to his business in the office. But Mr. Morgan used to appear in the Courts. A quick, intelligent man who could handle any question of law or fact quite as effectively as any barrister he was one of the ablest attorneys I have ever seen in this High Court. They were the leading firm of Government Solicitors. Then the firm which had the largest amount of business with Indian clients was Messrs.Branson and Branson. I do not believe there is any representative now of Messrs. Branson and Branson. The chief representative of that firm at that time was Mr. Reddy Branson. The large practice he enjoyed was due to one reason among others, that Mr. Branson was a linguist. He could speak three vernaculars, viz., Telugu, Tamil and Hindustani better than any native could. He was also a pleasant and genial man, who moved on good terms with all branches of the profession and was excellent company. Another firm which enjoyed a large practice was the firm of Grant and Short, represented by Robert Grant and James Short. Robert Grant joined the bar and became a very successful barrister. Mr. Short was also a man who could speak the vernaculars very

*A series of lectures delivered to the apprentices-at-law in 1918.

well, and Tamil exceedingly well. When the European members of the legal profession complain that their business has been taken away by Indians, they seem very often to think that it is by the exercise of some unfair means that the Indian branches of the profession have taken away their business. But it is natural that a member of the profession who can talk the language of the client, who can speak to him directly without the aid of an interpreter, listen to all that he says and understand him, has a much better chance of securing popularity than an attorney or a barrister who has to deal through an interpreter and cannot make himself understood by a client by speaking to him directly. Then there were two or three other firms which were in very full practice, for instance, the firm of Grant and Laing. Mr. Laing was one of the ablest of attorneys; next to Morgan I should put down Laing as perhaps the ablest attorney then. There was the firm of Wilson and King. It was latterly represented by Sir Henry King and is now by Mr. Partridge. Then there was Mr. Rowlandson who is still in the land of the living and spends the evening of his life at Ootacamund; a fine, witty Irishman, an exceedingly genial friend, full of pleasantry and anecdotage, a fine actor who used to take part in amateur dramatic society, a man whom nobody could help liking and one of my personal friends among the attorneys. He was then, I think, the Official Assignee of Madras. Those were the English firms which were then in the enjoyment of a large practice.

I now pass on to the section of the bar to which I belong and which you hope to enter, that is, the Vakils' branch of the profession. And here I will first deal with those gentlemen who were the leaders of the bar on the Original Side. The leading firm among the vakils on the Original Side was that of Messrs. Ananda Charlu and Sundaram Sastri. It is perhaps a circumstance rather curious to note that there are hardly any partnerships known among vakils. What exactly the reason is, is perhaps a matter of conjecture. Among the barristers it is not considered correct to form partnerships. Among the attorneys it is quite a usual thing because the business of the attorneys cannot possibly be carried on single-handed, if it is at all large. In the case of vakils, who have business either on the Original Side or on the Appellate Side, it would be a great

advantage if they form partnerships. But as a matter of fact the soil of Madras has been very uncongenial to the formation of any partnerships among vakils. Whether it is due to want of mutual trust or whether it is due to jealousy or whatever it may be is a matter which may be left to speculation.

The best known firm, as I said, among vakils on the Original Side was that of Ananda Charlu and Sundaram Sastri. Mr. Ananda Charlu was undoubtedly the leader of the vakil bar on the Original Side. He belonged to the set which passed out in 1870. He was junior to Mr. Subramania Aiyar and senior to Mr. Bhashyam Aiyangar. Mr. Ananda Charlu was a man well known to fame. He was known as a very conspicuous figure on many a political platform in Madras and latterly he became a member of the Imperial Legislative Council elected by the members of the Provincial Legislative Council. But all those honours had not come in those days. Mr. Ananda Charlu, when I first knew him, was a man of very strong personality, a man of very good natural parts, great resourcefulness, a man of great energy with excellent gifts of speech. He was a very good forensic speaker and could put his case in a telling, effective way. At that time he had not cultivated the highly stilted, bombastic style which he affected in later days on the platform and at the bar. He used to speak much more naturally, much more readily and fluently, and spoke without any preparation. He was very good in dealing with witnesses and altogether thoroughly deserved the position which he occupied as the head of the bar on the Original Side. He was one of the pleasantest men in private society—one of the few men whom I have known who had a real gift for conversation. We could pass hours with him pleasantly. He was very good at small talk and could speak exceedingly idiomatically and pleasantly. He was a man of great pluck and independence and would not allow himself to be cowed down or bullied by any Judge. Mr. Ananda Charlu's style of speaking underwent a change for the worse in later days. As he came to appear more and more on the platform he began to cultivate a very slow, almost tediously slow, measured and pompous style of delivery which had the effect of boring rather than impressing his hearers. Mr. Ananda Charlu's interests were not confined to legal work. He took great interest in politics. He

read literature largely and he was a man of society. Mr. Ananda Charlu's partner was Mr. Sundaram Sastri, the father of Sir Kumaraswami Sastri and the son of Mr. Ranganatha Sastri. Between the distinguished father and the son who occupies an even more distinguished position, Mr. Sundaram Sastri has been thrown into the shade. But he was a man also of a notable personality. He inherited from his father a robust constitution and a tendency to pugnacity, if not, even to pugilism. His father was an accomplished linguist and an accomplished athlete. Those were two of the great accomplishments of Ranganatha Sastri. It was said that he could speak 16 or 18 languages. I have heard him speak German with Dr. Oppert, Professor of Sanskrit in the Presidency College. He was known to be a rough rider. He would ride half-a-dozen horses in the morning for the purpose of exercise. He used to take enormous exercise and was very justifiably proud of his muscles Of Mr. Ranganatham Sastri's readiness of wit and his powers of repartee, numerous stories have been told and I have had the pleasure of hearing all from the lips of his son, Sundaram Sastri. For instance, there was a bishop once in his company and Mr. Ranganatham Sastri was speaking to him of the very conciliatory and winning ways of the Missionaries before a man became a convert and of the cold shoulder they showed after the conversion. He said that they talked of the fatherhood of God and brotherhood of man, but afterwards there was very little of cordiality. The bishop said that he must have been keeping very bad company. Mr. Ranganatham Sastri turned his back at once and said " Yes, I turn my back on it. " He was a man who would never put up with an insult and he was prepared for blows. That was the stock from which Mr. Sundaram Sastri was descended, and he inherited his father's readiness to take fire, a part of his father's herculean strength and some of his father's linguistic accomplishments. Mr. Sundaram Sastri, you may be curious to know, took his degree in Latin. He could speak Sanskrit, as many of the other members of the family of Mr. Ranganatham Sastri could, and he could speak French besides Hindustani, Telugu and Tamil And what was more to be envied than anything else, more than his attainments in these other languages I have mentioned, was his command of vigorous Anglo-Saxon. I have not

known another man with a greater command of vigorous Anglo-Saxon, and if I may be allowed to say so, of that part of Anglo-Saxon also which we call Billingsgate. He could give points to any low-bred Eurasian. He was a very ready, good speaker in his own way, and both Mr. Ananda Charlu and Mr. Sundaram Sastri were full of story, fun and wit, and in the good old days in the old High Court when we had the Chambers Court in a small room facing the sea, we generally used to sit in the verandah just outside the Court-room and listen to many a story and anecdote told by Mr. Ananda Charlu and Mr. Sundaram Sastri. This firm of Ananda Charlu and Sundaram Sastri did not last very long.

Another name that comes to one's memory is that of a gentleman who is still in the land of the living (1). That is Mr. P. V. Krishnaswami Chettiar. Taking all things together, I thought he was the ablest vakil on the Original Side in those days. He was a beautiful speaker, a man with fine features and a fine, silvery, ringing voice, with a fine wealth of phrases, and a man who took great pains with his cases, and prepared them far more deliberately than any Original Side practitioner in those days. He took very great care not merely with the evidence, but also with the law of his case. He was a very circumspect, cool cross-examiner, never allowed his discretion to be overcome by any excitement or zeal, and was a thoroughly reliable advocate. It was a pleasure to hear him in Court. His pronunciation, his delivery, his style, were all capital ; and even taking the Appellate Side I have still to find a man who had the same charm of delivery, the same sweet voice and the same faultless style of speaking, and who combined with all these accomplishments great circumspection and care in the preparation of his cases. Among the other vakils, there was one who was known more as an orator than as a vakil, Mr. P. M. Jagarao Pillai, a nice, cultured man, fond of French, who spoke fluently, with a fine voice, was often in requisition on the public platform, and gifted with that oratory which aims at sound rather than substance. He was well known on the platform and in the High Court; he was thoroughly liked as an excellent man. Then there was Mr. K. P. Visvanatha Iyer, a leading Vakil, a very good, painstaking, sensible gentleman. These were the leading vakils on the Original Side.

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1. Mr. Krishnaswami Chettiar died recently.—Ed.

The leading men on the Appellate Side in those days when I first joined the bar were Mr. Rama Rao and Mr. Bhashyam Aiyangar. Mr. Rama Rao belonged to an earlier set. He was the oldest member of the bar. He was enrolled in 1867 or so. He and Mr. Bhashyam Aiyangar practically divided a great part of the Appellate Side practice. Mr. Rama Rao was then perhaps in the height of his practice. He, however, outlived his time and in his latter days his practice dwindled practically to nothing. But at that time he was one of the leaders and he had his merits. He was a very painstaking and very industrious man. Many of the old leaders in those days were models of industry and thoroughness. Mr. Rama Rao was quite a model of the hardworking, painstaking Vakil. He was then, I think, a member of the Legislative Council. He was a great favourite with Sir M. E. Grant Duff, who was Governor from 1881 to 1886. Mr. Rama Rao's manner of speaking was not very attractive. He used to emphasise almost every syllable so much so that emphasis had no meaning. But the merit which really brought him at the bar was undoubtedly his painstaking habits, his application and his sense of duty to his clients. His reputation suffered, however, an eclipse towards the declining years of his life. His rival, however, at the time was one who was destined to eclipse everybody else in the bar here and who was destined to make a name that was to ring throughout India as one of the foremost jurists of his age. I refer to Mr. Bhashyam Aiyangar. Mr. Bhashyam Aiyangar had had a unique career even before he joined the bar. He had had the distinction of beating Sir T. Muthuswami Aiyar in the B. L. examination. They both appeared for the examination in the same year. Mr. Muthuswami Aiyar was even then well known to be one of the most deeply-read students of law and had had the advantage besides of having been a Judge for years. But Mr. Bhashyam Aiyangar had not to go to any Law College. He had become a District Registrar before he took his B. L. Degree and a District Registrar's duties were not so onerous as to leave little time for study and he devoted his leisure hours to the study of law and had the satisfaction of beating Sir T. Muthuswami Aiyar in the B. L. Eramination. He came first and Muthuswami Aiyar second. They were the two first in the first-class in those days. The first-class in B. L.

could be secured in those days only with 75 per cent. of marks, not 60 per cent. as it was fixed later. Mr. Bhashyam Aiyangar became Apprentice under Mr. O'Sullivan, of whom I have already spoken to you—a most generous master, one who appreciated the gifts of his pupil and was also shrewd enough to forecast the future of his pupil. It was rather curious that Mr. O'Sullivan should have predicted that Mr. Bhashyam Aiyangar would one day become his successor as Advocate-General. The reason why I say it was a curious prediction is that in those days there was a devoutly held superstition that only barristers could be Advocate-Generals. That a vakil could be an Advocate-General was a discovery to be made by Mr. Bhashyam Aiyangar himself, and when he demonstrated the legality of such an appointment, Sir Arthur Havelock's government was strong enough to overcome the existing superstition and appoint a Vakil to that Office when it fell temporarily vacant. Mr. O'Sullivan predicted a brilliant future for his pupil and his pupil more than justified his master's expectations of him. Of Mr. Bhashyam Aiyangar as he then was, or Sir Bhashyam Aiyangar as he afterwards became, I could speak for a very much longer time than an hour, but it is sufficient if I refer to some of his characteristic merits. Of course it goes without saying that he was the acutest lawyer in the Presidency. When Sir Charles Turner came from Allahabad, he came with the impression that the ablest Indian Judge in the whole of India was Mr. Justice Syed Mahmood. Undoubtedly Mr. Syed Mahmood was an able Judge. There is no gainsaying that. But Mr. Justice Turner was so captivated by Mr. Justice Mahmood's accomplishments that he thought it impossible for anybody to prove the superior of Mr. Justice Mahmood. And when he came here first, he began to ill treat the members of the bar and lord it over them and treat them with a certain amount of contemptuous condescension. But within a year or two he completely changed his mind and admitted that Sir Bhashyam Aiyangar was the ablest jurist and lawyer in India. The same opinion was formed by every Judge and by everybody who had an opportunity of hearing him, or coming in contact with him in any capacity either at the bar or outside the bar. Sir T. Muthuswami Aiyar had the highest respect for Sir Bhashyam Aiyangar. There was one very characteristic trait of Sir T. Muthuswami Aiyar to which, I am afraid, I did not advert on the last occasion and

that was his partiality for the Socratic method. He used to interrogate a practitioner very closely and used to ply him with questions till either the practitioner could convince him or he could convince the practitioner that one or the other was wrong. That was a very favourite method with Sir T. Muthuswami Aiyar. The ill-equipped or the ill-prepared practitioner naturally found it a torment and Sir T. Muthuswami Aiyar hardly spared anybody from the application of this method. There was one, however, whom he treated in an entirely different fashion and that was Sir Bhashyam Aiyangar. He was the one man for whom he had genuine respect, about whom he spoke highly to everybody and to the Government and whom he thought unnecessary to subject to Socratic methods. I have known the time when Sir S. Subramania Aiyar and Sir Bhashyam Aiyangar, both appeared before Sir T. Muthuswami Aiyar. There have been times when even Sir Subramania Aiyar was not spared by Sir T. Muthuswami Aiyar. But I have never known an occasion when Sir Muthuswami Aiyar ventured to treat Sir Bhashyam Aiyangar with anything but respect. That was the impression he created upon the minds of Judges and upon the minds of practitioners at the bar.

As I am now on this topic and as it is rather one on which I like to dwell, I may devote a little more time to Sir Bhashyam Aiyangar. It has so happened that I had to make an obituary reference to the loss our bar sustained in the death of Sir Bhashyam Aiyangar and some others, and what I said then is a summary of what I thought of Sir Bhashyam Aiyangar. There were many things in which he was a model to other practitioners, in the thoroughness with which he prepared his cases, in the great care which he took in the right method of presentation of cases in Court and in his extraordinary circumspection—that is a word which you will understand by and by as you grow more familiar with your business. Many were the opportunities we had of studying his methods of preparing cases. If you happened to be his junior and if you had to go to his house, he would take up the printed papers and would begin to study the pleadings first. The study of the pleadings took him, as it might seem to you at the time, an enormously tedious length of time. In the case of an impatient young man who thinks that these things ought to be gone through quickly, it would

strike him that he was taking an unconscionable length of time for his pleadings and that he was doing the study of his cases in an absent-minded manner. But, even in the midst of apparent distraction, the man was working, the brain was working, most steadily and with the greatest concentration. He was a man who had cultivated the art—and it is a very important and rare art—of thinking in the midst of distractions. There might be a dozen people speaking to him—it might be a clerk, a child, a vakil, an apprentice or a friend,—in the midst of all these distractions he would go on thinking out his case and he could pick up the thread where he had left it or where the distraction had intervened. And he often said that it was quite easy for him to think in the midst of distractions. That is an art which does not come by nature to the vast majority of people. It is an art which has to be sedulously and consistently cultivated.

Another thing was the importance he attached to a careful study of the pleadings. Everything depends upon the way in which you frame your case. By the time he had finished the plaint and the written statement, his mind would have cogitated upon all the various legal aspects of the case, what might be made of every statement of fact that was contained in the pleadings, all the possible issues which could be raised and how each fact could be worked up by way of offence or defence in the conduct of the case, so that the time which a beginner considered lost in this elaborate and awfully tedious method of reading was not really lost. One advantage of it you could see at once. Many of us can read the pleadings through and can even read the judgment or judgments in the case and remember it all fairly well. But our memory is very temporary. After the lapse of a few days you have probably forgotten. That was not the case with him. Once he mastered the pleadings and read the printed papers the impression on his mind was lasting. It was not an impression which could be wiped out by the impression of the next moment; but it was sealed for ever in his memory.

Another art which he cultivated was this. It is often the fashion now to condemn the *mnemonic* art in this country and not without excuse. It may be admitted the art of committing to memory or of exercising the memory has been the subject of much adverse comment. But nothing is possible in the

intellectual field if you have not cultivated your memory. What really is intended in these criticisms on the capacity of the Indian for cram—what is really intended to be condemned is the cramming without intelligent appreciation. But the committing a fact to memory in such a way that it cannot be wiped out by subsequent impressions is of great use in life, and especially to a lawyer or Judge, whether it relates to a knowledge of your law or a knowledge of the facts of your case or whatever else it may be—if you cannot depend upon your memory, you will soon find that you reach a very low level indeed. And in this respect of the cultivation of memory he had attained a wonderful success. He would read any case, however bulky it may be—whether it was a first appeal or a second appeal, it did not matter, whether the record was 500 or 5,000 pages, it did not matter—he never took a single note on paper. He always depended upon his memory. He never took notes. The only thing he did was to side-line or underline passages and never made any note of anything else. He took also precious care not to try to remember unnecessary details with which it would be merely idle to encumber one's memory. The dates and genealogy and things of that kind, he never cared to master. He had always a number of apprentices under him and a number of juniors with him. Whenever he was at a loss for any of these things he would depend upon them to supply the hiatus. He never carried a paper or pencil with him. He never carried a watch. He always looked to others for these and would grow wild if the thing was not supplied in time, when wanted. Similarly with dates, pedigrees, relationships and things of that kind. As to the leading facts of the case, as to the legal arguments and so on, he did not depend on others. He depended on his apprentices for the right volume and the proper page. Otherwise he never depended on anybody. I know of few other men with the same extraordinary gifts. Of one such I should make mention later on.

Then again I spoke to you about his circumspection. In presenting his case he always took care to study the best method of arranging the facts and putting it before the Judges so as to make an impression. You see it is not wise to pour out all your facts pell-mell before the Judge, tumble them off and leave the Judge to pick his way through. You must arrange your facts in such an order, you must present your

arguments in such a way that they may fall in logical sequence and you must also present them in such a way that you make an impression soon. The first blow is half the battle and the sooner you make an impression upon the Judge the better. You must therefore study which are the really salient facts of the case and which are the most important arguments and array and present them in such a way that they may appeal to the Judge readily and make an impression upon his mind. Of course, this involves the study of your own case thoroughly, of the way in which the thing should be presented, and also of the idiosyncracies of the Judge you have to deal with. Different arguments appeal to different Judges. So in presenting your case you have to see not merely what really are the important points in the case, what really are the points to be marshalled but also you have to study the idiosyncracies—I won't say weakness, lest it might appear an unworthy thing—of the Judge and put them in such a form that they shall be telling. There was no one who did this to such perfection as Sir Bhashyam Aiyangar. Another characteristic was his circumspection. Suppose in the middle of his argument some question was put to him by the Judge, he would take time to answer the question. Whether it was natural or intentionally cultivated and had become a second nature, it is unnecessary to say. But he had a drawling manner which assisted him very greatly in such predicaments. When the Judge put him a question, even if the answer was 'yes,' he woud say 'ya—as.' He would go on drawing it out for a minute by which time he would consider what would be the effect of an admission or otherwise. Of course, I do not say, I do not want to suggest that you should all cultivate the drawling habit or cultivate the habit of being slow to reply. It might create some unfavourable impression about you as in the case of a witness. But in his case there was no such suspicion because somehow or other he was known naturally to have a drawling manner. Well, if you are a man born with it, there is no harm in retaining it perhaps. He would never make a single statement in Court the precise effect of which he had not considered, as to how it would tell in his favour or against him. He was a man most guarded and careful in making statements. And what was more, he was exceedingly precise in the use of legal language. He had trained himself to precision from his earliest days. He would

never use an improper legal term. I do not think that he was a graceful speaker, or an eloquent speaker at all ; far from it. He had very many defects of form and manner. As I said, he had a drawling manner and he was often slow and generally measured in his speech and his voice was nothing worth mentioning. His pronunciation was not faultless, for instance, he would say 'Government' making the *n* very obstrusively conspicuous, would say 'govern—ed'. This trick of pronunciation was shared by Sir S. Subramania Aiyar who used to pronounce past-participles in a manner that gave the termination a very independent and aggressive existence. In spite of such faults of style and delivery, Sir Bhashyam Aiyangar's language, so far as the matter of legal appropriateness was concerned, was everything that could be desired. You could not possibly misunderstand him. Everything was clear-cut. This precision was one of his most striking characteristics—precision of language. Another trait was this, the cautiousness with which he made his statements. If any proposition required qualification, he would introduce the necessary qualification. He would never make an unguarded statement of which he might have occasion to repent afterwards, or which he might be obliged to withdraw. These were some of his characteristics of method.

As to his learning, erudition and subtlety, that goes without saying. But as between the two merits of learning and subtlety, he was even more of a subtle lawyer and that was the characteristic that fascinated anybody who heard him argue in Court. There have been other men with equal or greater amount of learning. Sir Ashutosh Mukerjea, for instance, was a man of enormous learning. But in the matter of subtlety I do not think Sir Bhashyam Aiyangar has ever been surpassed. He was undoubtedly the ablest legal intellect in his generation. It was on account of these high merits that he claimed the attention of his audience. Those who had not been accustomed to hear him might be silly enough to pass the judgment that he was an uninteresting or a flat advocate. But anybody with brains, anybody with a taste for law who heard him twice or thrice could not possibly resist the fascination of that mighty intellect. It was an intellectual treat to hear him argue, and I certainly consider it one of the greatest privileges of my life, a piece of good fortune that I had the opportunity of hearing such a subtle and splendid advocate.

If he was learned in the law, there was no man who cared less for reading outside law than Sir Bhashyam Aiyangar. There was no other subject in which he ever cared to read books. He never cared for poetry, history, philosophy or any other subject. Of course he took an interest in politics, but he had absolutely no taste for reading books in any other branch. With all that, the powerful character of his intellect could be seen by the originality of his views upon any subject you put before him, whether it be a question of politics, social reform or any other subject. Whatever it might be, he had always a turn for original thinking, and he had always something valuable to say, and the reason is not far to seek. When once I happened to tell him that Herbert Spencer prided himself on having read very few books and that he thought that the originality of his thought was in inverse proportion to his reading, it particularly pleased Sir Bhashyam Aiyangar and he thought that he himself belonged to the class of people whose originality of thought is in inverse proportion to the pabulum of reading it is called upon to digest. His views were always worth hearing upon any subject. But I must say, if I may venture to say so of a person for whom I have immense respect, that his views wewe often crude on political questions. Faith in liberty, equality and fraternity, faith in many of these abstractions has now taken the place of faith in those articles of creed which were once considered essential to one's salvation. He did not believe in any of these things, and one curious story he told me was this. One day Lord Ampthill was speaking to him about constitutional government and matters of that kind, and Sir Bhashyam Aiyangar who had no belief in parliamentary institutions, etc., told him that the best government is that in which the people have to do the least with the business, that that was the view of the orthodox Hindu and that it was found in Manu ; and when we were travelling together he asked me to find out that text. I was not in a position to ascertain it, but anyhow he had made the assertion on his own authority. Lord Ampthill however said, "Notwithstanding your authority, I still believe in my creed in constitutional government and in popular government". Sometimes he took a pleasure in making such statements. I have mentioned this to you as an instance of the occasional crudity of some of his views, but do not you walk away with the opinion

that he was a man whose views were generally crude upon subjects outside law. On the other hand his views were worth listening to on any subject. Apply the test to yourselves—everyone of you—and you will find that your views on many subjects are far from sound.

Before I come to Sir S. Subramania Aiyar I shall deal with some other members of the bar at the time. There was another intellect, a very powerful intellect, which unfortunately was cut off in the very prime of life, and that was Mr. T. Subba Rao. He was a Telugu gentleman of the Kistna District. I believe he was known as Devil Subba Rao in his University days on account of his remarkable intellect. He had a distinguished University career, he was a man of splendid intellect, a great mathematician. He became a Theosophist and his lectures on the *Bhagavad-Gita* are greatly admired by the Theosophists. But I am not now concerned with his exposition of Theosophy. I am rather here now to tell you something about Mr. Subba Rao's other gifts. Like Sir Bhashyam Aiyangar, Mr. Subba Rao was also a man who had cultivated a wonderful memory. I have seen him argue cases with heavy records of 400 or 500 pages without a scrap of note in his hands. He had a much more fluent, forcible delivery and was an incisive speaker. He spoke with feeling and conviction. He was a man who could put his arguments in a telling way, a very fluent, eloquent speaker. It was a pleasure to hear Mr. Subba Rao, and, had he lived, he might have risen to great heights, provided, however, he was not drawn too far into the realms of Theosophy and religious speculation. As it was, he enjoyed an excellent second-class practice, that is, next below the men at the top of the bar. He was a man of whom his opponents felt he was a man to reckon with. In private life he was a man of most genial disposition, most simple, straightforward, pleasant, with a brilliant sparkling intellect. I have had occasions to see this display of his intellectual performance. On any subject presented for discussion, half-a-dozen people might have been speaking. He would intervene in the debate in a way which would clench the point and carry conviction to all. It was a genuine eloquence of the intellectual sort. Unfortunately, as I said, he was cut off in the very prime of life. I doubt whether he was more than 35 when he died. Then there was Mr. C. R. Pattabhirama Aiyar, the father of

Mr. C. P. Ramaswami Aiyar. Mr. Pattabhirama Aiyar came to Madras in the year 1887. Before that he had practised in Tanjore and the District Judge, to whom he was best known in Tanjore and before whom he practised, Mr. Parker, was appointed a High Court Judge in 1885 in succession to Hutchins or Brandt, I am not sure. Mr. Pattabhirama Aiyar followed him in 1887. He soon acquired a very large practice on the Appellate Side. He had a distinguished academic career. He stood first in all the University examinations, Matriculation, F. A., B. A and B. L. He was a great favourite of the late Mr. T. Gopal Rao, the famous Principal of the Kumbakonam College, and Mr. Pattabhirama Aiyar was distinguished in Mathematics and English. He had covered a wide range of English Literature. But after he took to the bar he devoted himself to his work with the same intensity of attachment and zest as he had displayed in his college career. He had been a successful advocate in Tanjore and when the Chief Civilian Judge in the High Court was one whom he had known, naturally circumstances conspired to bring him a very large practice on the Appellate Side. Of course those who were maliciously disposed sometimes made the remark that he was a favourite of Mr. Justice Parker and that he owed some of his successes to that favouritism. But the fact was this. It was because of his merits as an advocate, of his thoroughness, industry and ability that he had succeeded in winning the good opinion of that Judge and the same accomplishments were bound to result in advantage to the cause which he pleaded. However, as I said, the maliciously disposed attributed a part of his success to the favour which he enjoyed with one of the Judges. There was an anecdote which I may perhaps relate. There was a second appeal one day in which Mr. Pattabhirama Aiyar appeared for the appellant. There was no question of law but the Judge wanted to interfere. Then Mr. Ranga Row, the vakil for the respondent got up and said, 'my Lord, I do not see what question of law there is in the appeal unless it be the fact that Mr. Pattabhirama Aiyar appears for the appellant.' That was a cheeky, mischievous remark, but Mr. Ranga Row was nothing if not cheeky. Though others were not so venturesome they still entertained the impression I have mentioned. But I may also tell you that Mr. Pattabhirama Aiyar was a thoroughly painstaking, conscientious and able advocate. There were one or

two arts however which unfortunately he introduced into the High Court but, which, I may say, were cultivated to even greater perfection by some that followed. One, for instance, was that of laughing at your opponent while he is arguing his case, not laughing broadly, not bursting out in a guffaw but, sniggering so as to convey to the Judge that you think very poorly of your opponent's case. The Judge of course must be a blessed fool to value the soundness of an argument by the valuation placed upon it by the opponent; but however there are some Judges who commit the folly of imagining that, when A and B appear against each other as advocates and when A is arguing his case, such side remarks or gestures as B might employ to signify his opinion of the worthlessness of his opponent's arguments should be accepted at their face value. This practice of course was spoken of by light-minded juniors as grinning at your opponent. It is not a very pleasing thing. It is not fair to laugh down your opponent or signify by your giggling that your opponent's arguments are worthless. That was a weakness that Mr. Pattabhirama Aiyar was subject to. But, as I said, such tricks became popular and laterly came to be regarded as an accomplishment and were practised as an art. Another practice which, in the days when I joined, was not prominent but which was followed on a very large scale in later years, was the art of interruption. There is one thing which it is well that budding advocates should remember and that is that a victory won by foul means is not worthy. If you give your opponent a full and fair chance of making himself heard and then you beat him, you are entitled to credit. But if you do anything, by word or by deed or by suggestion or otherwise to interfere with the fair hearing which your opponent might otherwise obtain, the victory which you may win is tainted, and is not worth having. No self-respecting man ought to care for it. In this as in other points it is difficult to lay down any hard and fast universal rule. There may be occasions when an interruption may be justifiable. You will be landed at once in the region of casuistry, if you attempt to define when interruption may be justifiable, when interruption may not be justifiable and how far it should be carried. I dare say that everybody who indulges in this art considers that the occasions on which he employs it are very justifiable and thereby lays a flattering unction to his soul. But whether that flattering unction is legitimate

or not can be easily judged not by the opponent but by other persons round about him. There is the whole bar sitting round and you can easily find out whether it is proper or not. I shall not attempt to go into any definition of the occasions when an interruption may be attempted and the occasions when it may not be attempted or is not justifiable. It is only necessary to say this as a very old worldly counsellor once said, 'To thine own self be true.' You have to remember the duty of fairness to your opponent. Do not interrupt with the object of putting him out and preventing him from getting a hearing. Remember this principle and you will be more or less profited. Once you have this principle implanted in you, you will be led aright on most occasions. It is not possible to define the point more exactly.

I would next mention two non-Brahmin representatives of the vakil branch of the profession who both occupied a respectable position. One was Mr. Salem Ramaswami Mudaliar, a man whose portrait you will find in the room of the Vakils' Association. He was one of the best representatives of the non-Brahmin community, a very fair-minded man. He was also a distinguished man in the University. He went out early in life as a Munsif and then came back and joined the bar. That is what happened to the other non-Brahmin representative also, Sir C. Sankaran Nair. He also went out as a Munsif and reverted to the bar. Mr. Ramaswami Mudaliar was a model of fairness and courtesy, a man of the highest character both in public and in private, free from any taint of pettiness or selfishness or anything of the kind, thoroughly amiable and a perfect gentleman. I have seldom come across such high types of character. In 1887 or so he was sent to England as one of a trio on a deputation to influence the people in England. I think his other two companions were Sir N. G. Chandavarkar and Mr. Surendranath Banerjea. What exactly the mission then was about, I have not got the least notion. But I only remember the fact that he went out in 1887, spent three months and came back a most ardent follower of a new philosophy of living which he impressed especially upon us Brahmins, that mutton was necessary to a good, healthy life. He insisted upon the value of animal food. We replied 'why do you want us to follow your example? You leave us alone.' He would tell us 'You are the more intelligent section of the community and I want you also to acquire all the virtues which I am convinced

can be acquired by a more generous diet.' That was one of his articles of faith which he brought with him from England. Mr. Ramaswami Mudaliar was also a member of the first Public Services Commission of which the President was Sir Charles Aitchison and Sir Charles Turner was a member. Mr. Ramaswami Mudaliar was appointed to represent Madras. Mr. Ramaswami Mudaliar was a type of a manly, fine character, a man who took great interest in the public life of this country and who was altogether a man of whom any community might have been proud. As a speaker he was not brilliant. He was a plain matter-of-fact, commonsense speaker ; no ornament, no particular fluency, no eloquence, nothing of the kind. But he stated his facts in a plain commonsense way which was undoubtedly useful.

(*To be continued.*)

SUMMARY OF ENGLISH CASES.

G. *v.* G. (1924) A. C. 349.

Divorce—Decree for nullity—Refusal by wife of sexual intercourse —Impotency —Repugnance to intercourse —Evidence.

In a petition for a nullity decree on the ground of impotency, it was proved that though the wife had no structural incapacity, she always resisted the frequent attempts of the husband to consummate the marriage even after her finally consenting to render conjugal duties. *Held,* it was a safe inference that the refusal was due to an invincible repugnance to sexual intercourse and that the will of the wife was so paralysed at the time of the attempts at consummation as to amount to incapacity and hence a decree of nullity should be passed.

BEATTY *v.* BEATTY, (1924) 1 K. B. 807.

Foreign judgment—Suit on—Finality of judgment—Test of.

In order that a foreign judgment may be enforceable in an English Court, it must be a final and conclusive judgment of the Court by which it was pronounced. The mere fact

that it may be the subject of an appeal to a higher Court does not prevent it from being final. The fact that the judgment does not contain in itself the amount sued for, but a simple arithmetical calculation is necessary does not make it any the less final.

MICHAEL ABRAHAMS, SONS & CO. *v.* BUCKLEY, (1924) 1 K. B. 903.

Husband and wife—Matrimonial proceedings—Solicitor—Suit for costs of wife—Liability of husband—Right to recover—Necessity for proceedings or result thereof.

In an action by the solicitor of a wife against the husband for costs incurred in matrimonial proceedings against him, wherein adultery, cruelty, etc., were alleged, it is not necessary for the solicitor to prove that the husband was guilty of cruelty or that he committed adultery. Nor is it essential to show that the wife had actually procured a decree in her favour. But the solicitor must prove that he acted on reasonable grounds, that he made adequate inquiries and that he showed proper diligence and full care.

Quaere Whether the action is maintainable if the wife is proved to have separate estate ?

Case-law discussed.

ST. LUCIA USINES AND ESTATES CO., LTD. *v.* COLONIAL TREASURER OF ST. LUCIA, (1924) A. C. 508.

Income-tax—Income arising or accruing—Meaning of—Debt accruing but unpaid—Difference between.

The words " income arising or accruing " are not equivalent to the words " debts arising or accruing, " as the former means money arising or accruing by way of income. Where the amount has not actually been received, a debt has accrued but income has not. But from this it does not follow that income is confined to what the tax-payer actually receives.

P. SAMUEL AND CO., LTD. *v.* DUMAS, (1924) A. C. 431.

Insurance—Marine—Perils of the sea—Scuttling of ship—Connivance of owner—Effect.

A ship was insured against "perils of the sea and of all other perils, losses, misfortunes that shall come to the hurt, detriment or damage of the ship. She was lost by scuttling through the connivance of the owner. *Held,* by Viscount Cave, Viscount Finlay and Lord Parmoor (Lord Sumner dissenting) the loss was not due to a peril of the sea and hence was not covered by the policy. In all such cases it should first be determined what was the proximate cause of the loss. The term "perils of the sea" refers only to fortuitous accidents or casualties of the seas.

Case-law and effect of Statute fully considered.

SALTER *v.* LASK, (1924) 1 K. B. 754.

Landlord and tenant—Ejectment—Suit for portion only of demised premises—If maintainable.

It is open to the plaintiff in an action in ejectment after expiry of a lease or after valid notice to quit to recover only part of the demised premises, as for example, when he has resumed possession of part of the premises already.

ANSTRUTHER-GOUGH-CALTHORPE *v.* MCOSCAR, (1924) 1 K. B. 716.

Landlord and tenant—Lease for 95 years—Covenant to keep premises well and sufficiently repaired—Damages—Measure of—Test—Commencement of lease to be looked to.

Some newly constructed houses were leased out for a period of 95 years and the lessee covenanted to keep the premises well and sufficiently repaired. At the end of the term an action was brought for damages for breach of this covenant. *Held,* reversing the decision of McCardie, J. in (1923) 2 K. B. 573 that in assessing damages, the lessee's liabilities should be measured from the standpoint of the require-

ments of tenants at the commencement of the lease and not the end of it.

Per Bankes, L. J. :—The principle laid down in *Proudfoot* v. *Hart*, 25 Q. B. D. 42, is not of general application : it applies only to short term leases in which the class of tenants at the end of the tenancy would be the same as at the commencement and hence the standard of repairs required would be the same. In the case of long period leases the age of the buildings is the dominant feature and the locality and class of tenants is only taken into account in relation to or as a consequence of the age of the buildings. The decision in *Morgan* v. *Hardy*, 17 Q. B. D. 770 lays down the proper test in such cases.

Per Scrutton, L. J. :—The Court in such cases should look to the character of the house and its ordinary uses at the time of the demise. It must then be put in repair and kept in repair. An improvement of its tenants or its neighbourhood will not increase the standard of repair nor will their deterioration lower that standard.

Per Atkin, L. J. :—The repairs are such as are needful and necessary for the maintenance of the structure so that it may be expected to last for its normal life if properly kept in repair.

ADAMS *v.* MORGAN & CO., LTD., (1924) 1 K. B. 751.

Principal and agent—Vendor carrying on business on vendee's account—Indemnity clause—Super-tax paid—Right to reimbursement.

Where under the terms of a contract of sale the vendor is to remain in possession until completion and to carry on the business for the benefit of the vendee and was to be entitled to indemnity, he can recover from the latter super-tax paid with respect to it. The fact that super-tax is imposed only on individuals and not on companies and that the vendee happens to be a company does not affect the agent's right to indemnity.

ANGLO-NEWFOUNDLAND DEVELOPMENT CO., LTD. *v.* PACIFIC STEAM NAVIGATION CO., (1924) A. C. 406.

Negligence—Contributory negligence—Plea of—What defendant has to establish.

Per Lords Atkinson and *Shaw* :—In order that a defendant could sustain a plea of contributory negligence he must establish that he himself could not by the exercise of reasonable care and diligence have avoided the consequences of the plaintiff's negligence. This principle applies also to cases of collision on the Admiralty Side. *Davies* v. *Mann,* 10 M. & W. 546 followed.

EVERETT *v.* GRIFFITHS, (1924) 1 K. B. 941.

Quo warranto *proceedings—Nature and incidents of—Relief discretionary.*

The grant of *quo warranto* process is to some extent discretionary.

The Crown Office practice requires that an application for *quo warranto* must be made by a competent relator and the Court will exert inquiry on the point. The application is to be by way of motion and not by means of an action. The relator is to file a verifying affidavit and the defendant who does not want to defend can " enter a disclaimer ". As distinguished from an action, a " judgment of ouster " can be given in proper cases. The Court can and will inquire into the conduct and motives of the relator.

HARNETT *v.* HARNETT, (1924) P. 126.

Restitution of conjugal rights—Suit for—Sincerity of applicant.

In an action for restitution of conjugal rights it is essential that the petitioner should prove a sincere desire for the relief claimed, with a corresponding willingness to render conjugal rights to the other spouse.

THE KOURSK, (1924) P. 140.

Shipping—Collision—Damage due to two vessels—Judgment against one—If bars suit against the other—Joint tortfeasors—Who are.

Where by separate and independent acts of negligence on the part of two vessels, a third ship is sunk, a judgment obtained against one of them for a portion of the liability does not bar an action against the other. The cause of action against each is different and they are not joint tortfeasors simply because one *damnum* resulted from their acts.

Who are joint tortfeasors considered.

Per Bankes, L. J. :—*Quaere* How far the defendant in the subsequent action can credit anything obtained in the prior action ?

SORRELL *v.* SMITH, (1924) 1 Ch. 506.

Trade combination—Procuring withdrawal of supplies—Protection of trade interests—When legal—Cause of action to sue.

A union of newsagents in order to ward off certain newsagents who had set up shops in their area without their permission requested the plaintiff, one of their own members, to withdraw his custom from the newsagents who supplied papers to the newcomers and transfer it to another. The defendants, a committee of newspaper proprietors, thought the action of the union was wrong and threatened to cause a discontinuance of the supply of papers to the persons to whom the plaintiff had transferred his custom ; they had not enquired into the merits of the original dispute but *bona fide* believed the action of the union was injurious to them. In an action by the plaintiff for an injunction restraining the defendants from procuring or attempting to procure a breach of contract *held, per curiam,* the defendants, even if their action was *prima facie* unlawful, were justified in adopting a policy which they honestly believed was necessary in the interests of their trade.

Per Baykes, L. J.—The defendants had not committed any actionable wrong or done anything more than what the law allowed them to protect their interests. (1921) 3 K. B. 40 followed.

JOTTINGS AND CUTTINGS.

Breach of Promise and Blackmail.—Another breach of promise action, in which no less than $ 20,000 was claimed as damages, has been dismissed by a jury after a suggestion of blackmail was made by the defendant's counsel. It would be improper to make any direct allusion to the case brought against M. Lebaudy since the Lord Chief Justice, after the jury had returned their verdict, announced that he would consider whether the papers in the case ought not to be laid before the Director of Public Prosecutions. But, without accepting for a moment the suggestion that the plaintiff in this particular case was actuated by improper motives, it is permissible to point out that the frequency with which the present law of breach of promise to marry is abused by the blackmailer is one of the main grounds on which an alteration of that law can most cogently be made. Lawyers know how frequently the existing law is utilised by designing women, not so much in the cases that come into Court as in the cases that are settled outside it. Some forty years ago Lord James of Hereford and Lord Herschell, both then members of the House of Commons, invited the House to resolve that "the action for breach of promise to marry ought to be abolished, except in cases where actual pecuniary loss has been incurred by reason of the promise, the damages being limited to such loss." The motion did not commend itself to the House of Commons at that time, but the reasons for making such an alteration of the law are, even apart from recent changes in the economic position of women, rather more cogent now than they were a generation or two ago.

—*The Law Journal, July* 19, 1924.

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The Appeal to Law—Lord Haldane's *apologia,* when he accepted office in the Labour Government, that it would not be the terrible thing that people feared of it, is being justified every day by the appeal to law which Mr. Ramsay Macdonald relies on as each fresh crisis arises in his difficult and responsible task. The Irish deadlock over the Boundary question has been met by a reference to the Judicial Committee of the Privy Council, which has led to a notable judgment on the limits of the Government's powers under the Treaty—and the

judgment is being put to practical effect. At the London Conference, which was at one time declared hopeless, an inter-allied agreement has been come to based on a free resort to legal methods and advice, and legality is the dominant note in every provision proposed for carrying out the Dawes Report. At every stage where differences between the Powers might lead to a fresh deadlock arbitration proceedings are interposed before there can be any fresh appeal to the sanction of force, and the Permanent International Court of Justice is made everywhere the supreme arbiter and final tribunal for the settlement of disputes. The displacement of the power of Might by Right is everywhere asserted, and in all these new developments the influence of the Lord Chancellor as jurist, not less than the powers of the Prime Minister as politician, is apparent.

—*The Law Journal, August* 9, 1924.

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American and English Legal Ideals.—Out of all the speeches of our American visitors at the various meetings arranged for them, there stands out, after the notable address of Mr. Hughes at Westminster Hall, the speech of Mr. Roscoe Pound at the dinner at the Middle Temple on July 21, from which we quote the following

"A great mass of new subjects have arisen for which one would look in vain in the pages of Blackstone or of Coke, and in those subjects frequently the diversity is as notable as the similarity. Yet, out of all that diversity and all that similarity, there are three points that stand out. In England and in America the law is ascertained, and the law is developed judicially and professionally, whereas in the rest of the world it is ascertained by legislation and developed academically. In England and the United States we have a traditional art of deciding cases on the basis of the recorded judicial experience of the past, whereas in the rest of the world cases are decided by a technique of applying written text. But, most of all, in England and in the United States we look at questions judicially, whereas in the rest of the world they are looked at, if I may say so, administratively ; and behind those three points I venture to think is a common frame of mind, a frame of mind which we have inherited from the Middle Ages, which thinks of

law as something not made, but found, and thinks of the quest for law as a quest for the justice and truth of the Creator. That is the frame of mind which led the Judges of the Middle Ages to tell Edward III that, though he could pardon an offender under his Great Seal as King of England he could not write a private letter as Edward Plantagenet to the Sherift and interfere with the due course of justice. It is that frame of mind which led the Judges of Henry VII, when Parliament enacted a statute that derogated from what were then regarded as the fundamentalities of the social order, to say that it was impertinent. It was that frame of mind that led the Judges to say to James I that he could not sit upon the bench and decide personal cases affecting the fortune or inheritance of his subjects. It was that frame of mind that has led Courts in the United States within a generation to remind sovereign legislatures of sovereign peoples that they too rule under God and the Law. In that frame of mind we have something which is enduring, while law books become obsolete and statutes are repealed—something permanent and unrepealable. I say to you that in that frame of mind we have a ground of unity beside which treaties, covenants, and alliances will prove but fleeting.

—*The Law Journal, August* 9, 1924.

Judicial Humour.—Chief Justice Erle, when a member of the Bar, apologised for a sally of wit which set the Court in a roar of laughter, replied 'The Court is very much obliged to any learned gentleman who beguiles the tedium of a legal argument with a little honest hilarity.' There are, it would seem, grave persons who, without objecting to a 'little honest hilarity' at the Bar or in the witness box, regard it as unbecoming on the Bench. It is solemnly announced that two members of the House of Commons—who, be it noted, sit for constituencies this side of the Tweed—intend to invite the attention of Parliament to what they regard as the growing tendency of Judges to indulge in jests. Not the least amusing thing about this serious protest against judicial joking is that it comes after Mr. Justice Darling has retired from the ordinary work of the Courts. The habit of judicial joking may, no doubt, sometimes go too far. An incident in the

career of Mr. Justice Stephen—who was by no means a 'judicial humorist' in the Gilbertian sense—indicates its danger. He was trying an action of slander in which both the parties were Billingsgate salesmen, and the counsel for the defendant was quick to turn the inherent humour of the situation to the advantage of his client. Mr. Dickens, now the Common Serjeant, but then a persuasive junior, recognising that the judge, like the jury and the rest of the Court, was enjoying the jocular aspect of the case, made a strong and successful effort to bring out the serious injury the plaintiff had sustained through the defamatory words spoken of him. Mr. Justice Stephen, his sense of justice at once aroused, summed up in favour of the plaintiff, and the jury, also sobered by Mr. Dickens' appeal, returned a verdict for his client. At the close of the case the learned Judge sent this note to Mr. Dickens 'Dear Dickens,—I am very grateful to you for preventing me from doing a great act of injustice.' Not, of course, that judges capable of relieving the tedium of Courts with a 'little honest hilarity' are less inclined to do justice than their more solemn brethren. They keep their humour 'within the limits of becoming mirth.' Jests, judicial or forensic, are rare in the criminal courts. Whatever laughter is heard is usually created by witnesses. The Courts whether civil or criminal, would, after all, have been much the poorer without a Maule, a Lockwood, or a Plowden. In the administration of the law, as in other spheres of life, humour is usually humane.

—*The Law Journal, September* 6, 1924.

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Reprieves and Capital Punishment.—It seems to be becoming the ordinary course in a certain section of the general press to foster agitations against the execution of public justice on notorious criminals—and the more infamous the greater the agitation—who have not only been duly tried and convicted of murder before a jury, but have had their appeals brought to the tribunal of three Judges specially provided for the purpose. and dismissed by that Court. When the Court of Criminal Appeal was established with a controlling power over all criminal trials and an unfettered right of appeal was practically accorded to prisoners in capital cases, it was thought that there would be an end to these agitations, which were previously ex-

cused by some omission or misreception of evidence in the course of the trial or by the charge to the jury of the presiding Judge, from whom there was formerly no appeal. But of late years the intervention of the appellate tribunal and its readiness to hear again everything that could be reasonably urged on behalf of a convicted prisoner has been ignored, and it has become common form, after a conviction for murder and dismissal of the invariable appeal, for petitions to be got up and spread broadcast for signature in every public-house and other place of resort, backed up by strenuous demands in the journals in question to stay the course of justice. The latest instance of this regrettable procedure has been furnished by the case of the poisoner Vaquier, whose special claim to public sympathy appears to have been that he was a Frenchman, and therefore accustomed to a different attitude in the Courts towards the *crime passionel,* of which he had been proved guilty by a British jury. Discrimination against foreigners is, of course, abhorrent to our ideals of justice, but that there should be a departure of this kind in favour of one, because he may have been accustomed to a different code or method of procedure, would be discrimination with a vengeance. There was nothing, indeed, to excuse the got-up agitation over this case, and it is to be regretted that not only should certain organs of the Press have helped to the full extent of their powers in the attempt to defeat the course of justice, but that serious politicians like Mr. Shortt, the ex-Home Secretary should have helped in the agitation by suggesting, in such a connection, a different machinery than that which is already amply provided by the law and the constitution for dealing with such criminals and their appeals.

—*The Law Journal, August* 16, 1924.

CONTEMPORARY LEGAL LITERATURE.

Business System in Law Offices.—Very helpful remarks under the above heading are to be found in the *American Law Review* for July-August, 1924. As the writer points out, the pursuit of law is a profession as well as a business. "To be a real success a man must play the game according to the rules, to start with. In the second place he must make a livelihood out of the practice of law or he is not a complete success; and I think, measured by fair standards that the lawyer is the greatest success who plays the game according to the rules and at the same time makes enough money out of the practice of the profession to keep him and his family in their proper place in society."

The writer believes that very few lawyers realize in its full meaning the principle that every lawyer conducts two businesses, his client's business and his own. The lawyer's own business involves among other things the rental of the office, the buying of a library, the purchase of office furniture, a system of keeping books, a system of keeping accounts, collecting bills, and other things. Besides, it involves the very personality of the lawyer himself, his education, his personal appearance, his clothes, his habits, etc. It should also involve the study of getting and keeping clients. How many of us, asks the writer, pay any particular attention to that? He can give the names of certain men at the Chicago bar who are of rather mediocre attainments as real lawyers, but who give that subject real study and real thought, and are regarded as very successful lawyers. There is a whole field of study along the line of getting and keeping clients, and it should be a part of the system in a lawyer's office.

Lawyers should study efficiency. That is, waste must be cut out. In every office there is a lot of waste motion; two or three or four men are going over the same ground, when it is necessary for only one man to do it. The next principle is that lawyers must give service. Busy business-men to-day want results, not delays or excuses or *alibis*. And when they get results they are willing to pay the price, and they are glad to go back to the man who gave them those results. As we must study efficiency we must get away from a lot of detail. There

is a great deal of detail work that lawyers are doing every day that they can get away from if they make a serious effort to do it; and "if we would get away from that detail and give our own business more planning for the future, figure out where we are going to get good clients, why it was we lost good clients last year, what offended them, where their business went, why it went, figure how to get good clients to take the place of those who left, figure where our future is leading, consider what we are doing in public affairs, see if we are becoming more efficient, and better known at the bar, and in business circles, see if we are widening our circles of acquaintances, giving all this some study, instead of keeping our noses in our papers and books all the time, at the end of the year, or at the end of five or ten years we will be way ahead of where we would be by following our present course."

The writer thinks it would be better for lawyers if they had a business training. Lack of brains is a misfortune, and lack of clients is certainly a tragedy, but careless business methods are the lawyer's own fault. The lawyer is like a salesman. He has to sell himself to the public, his clients. He must make them believe he has ability of a certain kind, or of all kinds; that he can attend to business and can get results. Then if he gets a case to handle he has another proposition of salesmanship. If he is going before the Supreme Court to argue a case, all he has to do is to sell his case to the Supreme Court. If he is trying it before a jury he has the same proposition of salesmanship.

The system must come first. There is no use waiting for the business to come. Plan the system first, even if it is in a small way, and build on to it as your business develops.

The writer continues in the same instructive strain about a system of charging for work and so on, and concludes that he is not relegating the practice of the law to the position of a mere business. He says "There is something in the practice of the law that is bigger and better than any business in the world. There is something in the relation between a lawyer and his client that is not merely a business relation. It is confidential. It is fiduciary in its nature. It is almost sacred. The rules that apply to ordinary business are not sufficient, they are not adequate, as applying to the law. The lawyer

has to take his satisfaction out of serving his client and serving the public. He must be a law enactor, a law interpreter, and a law enforcer." He has obligations to the Court, to his client and to himself. But by applying business principles, studying them and applying them to his practice, the lawyer can be a better member of society. He gets better results for his clients and for himself.

Forged Cheques.—In the same number of the *Review* appears another article on the risk of forgery or alteration of cheques. The writer ascertains and explains the incidence of risk under normal and exceptional circumstances in the case of (*a*) forgery of the drawer's name, (*b*) alteration of the cheque, and (*c*) forgery of an indorsement.

(*a*) Where the bank pays a cheque in which the drawer's name is forged, it must bear the loss. For under the contract between the depositor and the bank, the bank is empowered to charge the depositor only upon the depositor's order and a cheque to which the depositor's name is forged is not his order. The bank ought to be able to recover from a *bona fide* holder of the cheque on the ground that the money was paid under a mistake of fact. But the contrary has been settled since Lord Mansfield's time *Price* v. *Neal* (1762) 3 Burr. 1354. This rule is one of commercial convenience or policy rather than one of logic.

The risk will be shifted to the depositor if he has been guilty of negligence. He should examine and verify his vouchers with reasonable diligence, and must communicate any forgery discovered. Even then the bank can recover only if it appears that the depositor's failure resulted in actual prejudice to the bank—as, for example, in depriving it of an opportunity to recover the money from the forger. The depositor will be liable for breach of duty, to the extent to which the bank's loss can be traced to it. The risk will likewise be shifted to the holder if he was negligent. In an Ohio case recovery was allowed where the holder had purchased the cheque from a stranger without inquiry as to his identity or his right to the cheque.

(*b*) If the bank pays money in excess of the amount for which the depositor signed the cheque, it must bear the loss. But then it is the duty of the drawer to draw his cheques with ordi-

nary care. To sign a blank cheque, or a cheque so drawn that there are blank spaces which make alterations easy, is ordinary negligence. The duty carefully to examine and verify vouchers returned by the bank and promptly to notify the bank of mistakes, applies here also. If the examination of vouchers is relegated to an employee, the negligence or fraud of the latter will not protect the drawer.

The bank may recover the excess payment from a *bona fide* holder. The rule in *Price* v. *Neal* does not apply. For the body of the cheque need not be in the hand of the drawer, and an indorsee is in the same position as the bank. The holder may be protected by special equities, such as a change of position or the like.

(*c*) In the case of a forged indorsement again, the payment by the bank will not be according to the tenor of the order of the drawer, and the bank must bear the loss. But in this class of cases, the risk can rarely shift on to the drawer. For he is no more familiar with the indorser's signatures than the bank. But if he happens to learn that an indorsement is forged it is his duty to notify the bank promptly, and if by his tardiness the bank is prejudiced, the loss may be charged to him. As in (*b*) the bank may ordinarily recover from the good faith holder to whom it has paid the cheque. As the holder can recover from his indorser, the ultimate risk will be on the person who dealt with the forger.

The loss in this case will be the payment due to the true owner of the cheque, whose name has been indorsed by the forger or converter. The bank has to pay the true owner because it is its duty to return the cheque to the true owner and if it fails to do so it is itself a converter and is liable to the true owner for its value.

The writer then proceeds to consider how far the common law has been affected by statutes in America.

[S. 60 of the English Bills of Exchange Act provides in effect that in the case of a forged indorsement the ordinary incidence of risk will be on the drawer. This is not the law in America.]